

## **REMARKS**

### **I. Status Of The Claims**

Claims 1-11, 13, 15-22, 25, and 34-44 were originally pending in the present application. Claims 1-11, 13, 15-22, 25, and 34-44 stand rejected. Applicants have amended claims 2, 4-8, 10, 13, 15, 17, 20, 25, 34 and 35. Claims 1, 9, 12, 14, 16, 23, 24, 26-33, 37, and 38 have been canceled without prejudice or disclaimer, and added new claims 45-47. Claims 2-8, 10, 11, 13, 15, 17 – 22, 25, 34-36 and 39-47 are currently pending in the present application. No new matter has been added.

### **II. Allowable Subject Matter**

The Examiner has indicated that claim 15 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 15 has been rewritten in independent form including the limitations of the base claim and intervening claims. Therefore, claim 15 is allowable.

Dependent claims 2-8, 10, 11, 13, and 34-36, all of which depend from claim 15, are allowable as well for at least the reason claim 15 is allowable.

### **III. Drawing Objections**

The Office Action has objected to the drawings for informalities. Applicants have amended the drawings, specifically Figure 7a, as suggested by the Examiner to clarify the shaft of the centrally located protrusion and provided an amended Figure 7a, attached herewith. Applicants have added reference number 780 indicating the shaft of the centrally located protrusion and reference number 762 indicating a hemispherical portion of the male protrusion. Thus, Applicants request that the objection to the drawing be withdrawn. No new matter has been added.

### **IV. Amendments To The Specification**

Applicants have amended page 14, line 23 to page 15, line 27 of the specification to clarify the elements that reference numbers 740 and 742 identify, added reference number 762,

indicating a hemispherical portion of the male protrusion, and added reference number 780, indicating a shaft of the male protrusion. No new matter has been added.

#### V. **Claim Rejections Under 35 U.S.C. § 112**

The Office Action has rejected claims 9-11 and 37-38 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Applicants have canceled claims 9, 37, and 38. Applicants suggest that claims 10 and 11 are not subject to the 112 rejection as neither depend from canceled claim 9. Therefore, Applicants request withdrawal of the 35 U.S.C. § 112 rejections.

#### VI. **Claim Rejections Under 35 U.S.C. § 103**

Claims 1, 4-6, 8, 13, 16, 17-22, 25, and 39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Tatar* (U.S. Pat. No. 5,910,142) in view of *Ferree* (U.S. Pat No. 6,802,844) and *El-Haw et al.* (U.S. Pat No. 6,726,392). Claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Tatar* in view of *Ferree* and *El-Haw et al.* as applied to claim 1, and further in view of *Doubler et al.* (U.S. Pub. No. 2005/0070899). Claims 7 and 9-11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Tatar* and *Ferree* and *El-Haw et al.* and in further view of *Sgier et al.* (U.S. Pub. No. 2005/0171538). Claims 34-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Tatar* in view of *Ferree* and *El-Haw et al.* Claims 37 and 38 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Tatar* in view of *Ferree* and *El-Haw et al.* and in further view of *Sgier et al.* Claims 40-44 are rejected under 35 U.S.C. § 103(a) as being as being unpatentable over *Tatar* in view of *Ferree* and *El-Haw et al.* Applicants respectfully traverse the rejection.

Applicants have amended claims 17, 20 and 25 to include the recitation of wherein the partial hemispherical ball member has a centrally located protrusion having a spherical portion facing an outboard side of the second end and the conical surface tapers to a shaft of the centrally located protrusion. Applicants note that when this recitation is combined with the additional recitations of amended claims 17, 20 and 25, amended claims 17, 20 and 25 now recite, among other things, the same recitations of allowable claim 15. Neither *Tatar*, *Ferree*, or *El-Haw et al.*

alone or in combination teach a pedicle screw assembly having a partial hemispherical ball member having a centrally located protrusion having a spherical portion facing an outboard side of a second end and a conical surface that tapers to a shaft of a centrally located protrusion.

For at least these reasons, claims 17, 20 and 25 are allowable over *Tatar* in view of *Ferree* and *El-Haw et al.*, or in combination with any of the other prior art of record. Dependent claims 18, 19, 21, 22, 39-44, and new claims 45-47, which depend from their respective amended independent claim 17, 20 or 25, are patentable based on their own merits, as well as the reasons their respective independent claims are allowable. Therefore, it is respectfully requested that the section 103 rejection be withdrawn.

**Conclusion**

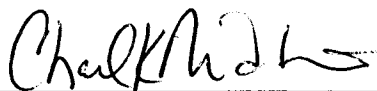
Applicants respectfully request favorable action in connection with this application.

The Examiner is invited and urged to contact the undersigned to discuss any matter concerning this application.

No fee is believed to be due for this submission. Should a fee be required, the Commissioner is authorized to charge any such fee to Womble Carlyle's Deposit Account No. 09-5028.

Respectfully Submitted,

Date: May 14, 2009

  
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